



Legislative Council Staff  
Nonpartisan Services for Colorado's Legislature

# Fiscal Note

**Drafting Number:** LLS 23-0932 **Date:** April 17, 2023  
**Prime Sponsors:** Sen. Roberts; Van Winkle **Bill Status:** Senate Finance  
**Fiscal Analyst:** Clayton Mayfield | 303-866-5851  
clayton.mayfield@coleg.gov

**Bill Topic:** INTOXICATING CANNABINOID HEMP & MARIJUANA

**Summary of Fiscal Impact:**

<input checked="" type="checkbox"/> State Revenue	<input checked="" type="checkbox"/> TABOR Refund
<input checked="" type="checkbox"/> State Expenditure	<input type="checkbox"/> Local Government
<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill modifies the regulation of cannabinoids and compounds derived from hemp and marijuana, and requires the Department of Revenue to conduct a feasibility study. Starting in FY 2023-24, the bill increases state revenues and expenditures.

**Appropriation Summary:** For FY 2023-24, the bill requires appropriations totaling \$1.4 million to multiple state agencies. See State Appropriations section below.

**Fiscal Note Status:** The fiscal note reflects the introduced bill. Due to time constraints, this analysis is preliminary and will be updated following further review and any additional information received.

**Table 1**  
**State Fiscal Impacts Under SB 23-271**

		Budget Year FY 2023-24	Out Year FY 2024-25
<b>Revenue</b>	Cash Funds	\$707,269	\$596,021
	<b>Total Revenue</b>	<b>\$707,269</b>	<b>\$596,021</b>
<b>Expenditures</b>	General Fund	\$575,289	\$355,834
	Cash Funds	\$841,074	\$704,948
	Centrally Appropriated	\$206,253	\$196,564
	<b>Total Expenditures</b>	<b>\$1,622,616</b>	<b>\$1,257,346</b>
	<b>Total FTE</b>	<b>8.2 FTE</b>	<b>7.5 FTE</b>
<b>Transfers</b>		-	-
<b>Other Budget Impacts</b>	TABOR Impact <sup>1</sup>	\$480,000	\$480,000
	General Fund Reserve	\$86,293	\$53,375

<sup>1</sup> Revenue from marijuana business license fees is not subject to TABOR.

## **Summary of Legislation**

The bill modifies the regulation of the manufacture, production, and distribution of cannabinoids and compounds derived from hemp and marijuana, including synthetic cannabinoids. Cannabinoids and compounds are divided into the following classifications for hemp and marijuana derived cannabinoids:

- intoxicating cannabinoids
- nonintoxicating cannabinoids; and
- potentially intoxicating compounds.

Under the bill, intoxicating cannabinoids and potentially intoxicating compounds may only be sold within Colorado in accordance with the Marijuana Code, but can be manufactured or produced for export. The Department of Revenue (DOR) is responsible for the regulation and enforcement of marijuana-derived cannabinoids and compounds, and the Colorado Department of Public Health and Environment (CDPHE) is responsible for the regulation and enforcement of hemp-derived cannabinoids and compounds.

**CDPHE regulation.** Beginning July 1, 2023, owners of regulated hemp facilities must register annually with the Colorado Department of Public Health and Environment (CDPHE) and pay an application fee of \$100 and a registration fee of \$1,500. The bill specifies that it is unlawful for a person to manufacture or sell hemp and cannabinoids without registering or complying with the bill's provisions, and specifies a civil penalty of up to \$10,000 per day per violation for regulated hemp facilities that do not comply with the provisions of the bill.

**DOR regulation.** The bill requires that manufacturers of intoxicating or potentially intoxicating products derived from marijuana obtain a license under the Marijuana Code. By July 1, 2024, the DOR must submit a report to the General Assembly analyzing the feasibility of establishing a standing committee to evaluate cannabinoids and compounds for classification.

**Rulemaking.** The bill charges CDPHE and DOR with adopting rules related to labeling, regulation of synthetic cannabinoids, sales limits, definitions or classification of intoxicating products, and other regulation required.

Finally, the bill updates statutory provisions for certain crimes regarding synthetic cannabinoids, updates statutory references regarding local government regulation of hemp businesses, and clarifies the definition of retail marijuana in the tax statutes.

## **Background**

[Senate Bill 22-205](#) created a task force to study intoxicating hemp products and make legislative and rule recommendations. The task force report can be found [here](#).

**Comparable Crime Analysis**

Legislative Council Staff is required to include certain information in the fiscal note for any bill that creates a new crime, changes the classification of an existing crime, or creates a new factual basis for an existing crime. The following section outlines crimes that are comparable to the offense in this bill and discusses assumptions on future rates of criminal convictions resulting from the bill.

**Prior conviction data and assumptions.** This bill creates a new factual basis for the existing offenses of unlawful use or possession of any synthetic cannabinoids and unlawful distribution, manufacturing, dispensing, sale, or cultivation of synthetic cannabinoids by allowing synthetic cannabinoid production. From FY 2019-20 to FY 2021-22, 70 offenders have been sentenced and convicted for these offenses; however, since it is unknown how many of these convictions resulted from activity that would be lawful under the bill, the fiscal note assumes that there will be a minimal impact to criminal case filings or convictions for these offenses under the bill. Because the bill is not expected to have a tangible impact on criminal justice-related revenue or expenditures at the state or local levels, these potential impacts are not discussed further in this fiscal note. Visit [leg.colorado.gov/fiscalnotes](http://leg.colorado.gov/fiscalnotes) for more information about criminal justice costs in fiscal notes.

**State Revenue**

The bill increases state fee revenue to CDPHE, DOR, and potentially the Judicial Department beginning in FY 2023-24, as described below. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency; fee impact from the bill is discussed below.

**Fee impact on hemp businesses—CDPHE.** The bill increases fee revenue to the Wholesale Food Manufacturing and Storage Protection Cash Fund in the CDPHE by \$480,000 beginning in FY 2023-24 as detailed in Table 2. Fees for hemp application and registration fees are established in the bill, and the fiscal note assumes that 400 manufacturers will apply for a registration. Table 2 below identifies the fee impact of this bill. This fee revenue is subject to TABOR.

**Table 2  
 Fee Impact on Hemp Businesses**

<b>Fiscal Year</b>	<b>Type of Fee</b>	<b>Current Fee</b>	<b>Bill Fee</b>	<b>Number Affected</b>	<b>Total Fee Impact</b>
FY 2023-24	Hemp Application Fee	\$100	\$100	400	-
	Hemp Registration Fee	\$300	\$1,500	400	\$480,000
<b>FY 2023-24 Total</b>					<b>\$480,000</b>
FY 2024-25	Hemp Application Fee	\$100	\$100	400	-
	Hemp Registration Fee	\$300	\$1,500	400	\$480,000
<b>FY 2024-25 Total</b>					<b>\$480,000</b>

Revenue from the civil penalty provided for in the bill must also be deposited into this fund. It is assumed that most businesses will take remedial action before a civil action is filed by the CDPHE and, therefore, any penalty revenue is expected to be minimal.

**Fee impact on marijuana licenses—DOR.** The bill increases state revenue to the Marijuana Cash Fund in the DOR by \$227,269 in FY 2023-24, and by \$116,021 in FY 2024-25 as detailed in Table 3 below. These fee amounts reflect the revenue required to cover the additional expenses that DOR will incur to implement the bill. Actual fees will be set administratively by the DOR based on cash fund balance, program costs, and the number of marijuana licensees subject to the fee. Marijuana fee revenue is not subject to TABOR. See Technical Note.

**Table 3  
 Fee Impact on Marijuana Licensees**

<b>Fiscal Year</b>	<b>Marijuana Licensees</b>	<b>Total Fee Impact</b>
FY 2023-24	Fee increase to cover Marijuana Cash Fund expenditures	<b>\$227,269</b>
FY 2024-25	Fee increase to cover Marijuana Cash Fund expenditures	<b>\$116,021</b>

The bill may minimally increase the number of marijuana license applications from manufacturers of intoxicating cannabinoid products. Any change in revenue from license fees is expected to be minimal.

**Judicial Department.** The bill may increase state revenue from filing fees in the Judicial Department due to potential civil actions filed by the CDPHE against noncompliant hemp businesses. This fee revenue is subject to TABOR. This fiscal note assumes most businesses will follow the law, and any revenue increase is expected to be minimal.

**State Expenditures**

The bill increases state expenditures in CDPHE and DOR by \$1.6 million in FY 2023-24, and \$1.3 million in FY 2024-25, paid from the General Fund and cash funds. Expenditures are shown in Table 4 and detailed below.

**Table 4  
 Expenditures Under SB 23-271**

	<b>FY 2023-24</b>	<b>FY 2024-25</b>
<b>Department of Public Health and Environment</b>		
Personal Services	\$496,195	\$504,901
Operating Expenses	\$7,425	\$7,425
Capital Outlay Costs	\$40,020	-
Legal Services	\$190,332	\$190,332
Other Costs	\$483,491	\$262,000
Centrally Appropriated Costs <sup>1</sup>	\$177,884	\$176,667
FTE – Personal Services	5.4 FTE	5.5 FTE
FTE – Legal Services	1.0 FTE	1.0 FTE
<b>CDPHE Subtotal</b>	<b>\$1,395,347</b>	<b>\$1,141,325</b>

**Table 4  
 Expenditures Under SB 23-271 (Cont.)**

<b>Department of Revenue</b>		
Personal Services	\$126,435	\$94,774
Operating Expenses	\$2,025	\$1,350
Capital Outlay Costs	\$13,340	-
Legal Services	\$57,100	-
Centrally Appropriated Costs <sup>1</sup>	\$28,369	\$19,897
FTE – Personal Services	1.5 FTE	1.0 FTE
FTE – Legal Services	0.3 FTE	-
<b>DOR Subtotal</b>	<b>\$227,269</b>	<b>\$116,021</b>
<b>Total</b>	<b>\$1,622,616</b>	<b>\$1,257,346</b>
<b>Total FTE</b>	<b>8.2 FTE</b>	<b>7.5 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Department of Public Health and Environment**

The bill increases expenditures in the CDPHE by \$1.4 million in FY 2023-24, with \$575,289 paid from the General Fund, \$345,576 from the Wholesale Food Manufacturing and Storage Protection Cash Fund, and \$296,598 paid from the Marijuana Tax Cash Fund.

**Staffing.** The CDPHE requires the following staff, and costs include standard operating and capital outlay expenses:

- 1.0 FTE of Scientist IV to conduct required testing and research of hemp-derived product, research safety standards, monitor product trends, and identify novel cannabinoids and compounds;
- 1.0 FTE of Project Manager II to track adverse public health impacts from cannabinoids and compounds, review medical literature, review clinical evidence, and review epidemiological research findings; and
- 3.5 FTE of Environmental Protection Specialists to develop and enforce safety regulations for hemp businesses, as well as conduct site inspections for these businesses.

**Legal services.** The CDPHE requires 1,800 hours of legal services support, provided by the Department of Law (DOL), to assist with initial rulemaking to implement the bill and ongoing enforcement. This equates to 1.0 FTE in DOL.

**Other costs.** In addition, CDPHE requires the following lab and testing related costs:

- \$200,000 in one-time costs for specialized lab equipment and instrumentation used to analyze synthetically derived cannabinoids;
- \$100,000 in ongoing costs for lab supplies, including necessary supplies and equipment service costs; and
- \$171,491 in FY 2023-24, decreasing to \$150,000 in future years, to certify third-party hemp testing labs.

## Department of Revenue

The bill increases expenditures in the DOR by \$227,269 in FY 2023-24, paid from the Marijuana Cash Fund. See Departmental Difference for more information on the fund source.

**Staffing.** The DOR requires 1.0 FTE to assist with implementation regarding marijuana-derived cannabinoids and compounds, rulemaking, product quality investigations, and the feasibility study. Additionally, the DOR requires a term-limited 0.5 FTE to assist with coordinating and writing the feasibility study report required by the bill.

**Legal services.** The DOR requires 540 hours, which equates to 0.3 FTE, of legal services support, provided by the DOL, to assist with the feasibility study and rulemaking.

## Judicial Department

The bill may increase workload in the trial courts due to the potential for civil actions filed by the CDPHE against noncompliant hemp businesses. This fiscal note assumes most businesses will follow the law and any workload increase is expected to be minimal.

## Centrally Appropriated Costs

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. These costs, which include employee insurance and supplemental employee retirement payments, are shown in Table 2.

## Other Budget Impacts

**TABOR refunds.** The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. This estimate assumes the March 2023 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2024-25. Because TABOR refunds are paid from the General Fund, increased cash fund revenue will reduce the amount of General Fund available to spend or save.

**General Fund reserve.** Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

## Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature, and applies to offenses committed or conduct occurring on or after the effective date.

## State Appropriations

For FY 2023-24, the bill requires the following appropriations to the Colorado Department of Public Health and Environment:

- \$575,289 from the General Fund, and 1.0 FTE;
- \$345,576 from the Wholesale Food Manufacturing and Storage Protection Cash Fund, and 3.5 FTE;
- \$296,598 from the Marijuana Tax Cash Fund, and 1.0 FTE. Of this amount, \$190,332 is reappropriated to the Department of Law, and 1.0 FTE.

For FY 2023-24, the bill also requires an appropriation of \$198,900 from the Marijuana Cash Fund to the Department of Revenue, and 1.5 FTE. Of this amount, \$57,100 is reappropriated to the Department of Law, and 0.3 FTE.

## Departmental Difference

**Marijuana Cash Fund.** The Marijuana Cash Fund is currently in a cash fund deficit of approximately \$4.0 million. While the DOR has the ability to adjust fees or make other programmatic adjustments, it has concerns about doing so given the current economic conditions in the marijuana industry, and requests a General Fund appropriation for this bill. This fiscal note assumes that a regulatory program must operate using a cash fund, and does not include funding from the General Fund for the DOR.

## State and Local Government Contacts

Agriculture

Public Health and Environment

Judicial

Revenue

Law